

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

GARY MAX CHAMBERS

PLAINTIFF

v.

Civil No. 6:18-cv-6091

JASON WATSON, Sheriff, Clark County, Arkansas;
DERRICK BARNES, Administrator, Clark County
Detention Facility; ROBERT JONES, Deputy Sheriff,
Clark County; OFFICER CHASE KERSEY; OFFICER
K. LOVE, Clark County Detention Facility; DEPUTY
NICK FUNDERBURK; DEPUTY PERRY; DEPUTY
ANDREW SAMUELS; DEPUTY NATE MORRISON;
and TOMMY WALDRON, Amity Police Department

DEFENDANTS

ORDER

Before the Court is the Report and Recommendation filed February 3, 2020, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. ECF No. 82. Judge Bryant recommends that the Clark County Defendants’¹ Motion for Summary Judgment (ECF No. 43) be granted in part and denied in part. Judge Bryant further recommends that Separate Defendant Tommy Waldron’s Motion for Summary Judgment (ECF No. 47) be granted in part and denied in part. No party has filed objections to the Report and Recommendation, and the time to object has passed. *See* 28 U.S.C. § 636(b)(1). Upon review, the Court adopts the Report and Recommendation as it relates to the merits of Plaintiff’s claims.²

Accordingly, the Clark County Defendants’ Motion for Summary Judgment (ECF No. 43) is **GRANTED IN PART and DENIED IN PART** as follows:

- the motion is **denied** as to the issue of exhaustion of administrative remedies;

¹ The Clark County Defendants are identified as follows: Sheriff Jason Watson, Derrick Barnes, Chief Deputy Nick Funderburk, Robert Jones, Chase Kersey, Office K. Love, Nate Morrison, Deputy Andrew Samuels, and Deputy Perry.

² The Court does not adopt Judge Bryant’s specific finding that “[the Clark County] Defendants have failed to establish that they are entitled to the affirmative defense of exhaustion of administrative remedies.” ECF No. 82, p. 18. Instead, the Court finds that material questions of fact remain as to whether prison officials failed to provide Plaintiff with a grievance form, so as to render his administrative remedies unavailable under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). For this reason, the Court finds that the Clark County Defendants’ Motion for Summary Judgment (ECF No. 43) should be denied as it relates to the issue of exhaustion.

- the motion is **granted** as to Plaintiff's individual capacity claims against Sheriff Jason Watson and Derrick Barnes, and these claims are **DISMISSED WITH PREJUDICE**;
- the motion is **granted** as to Plaintiff's individual capacity claim against Robert Jones with respect to the book-in incident as set forth in claim three of the Amended Complaint, and these claims are **DISMISSED WITH PREJUDICE**;
- the motion is **granted** as to all official capacity claims against the Clark County Defendants, and these claims are **DISMISSED WITH PREJUDICE**;
- the motion is **denied** as to Plaintiff's individual capacity claims against Robert Jones, Nick Funderburk, Chase Kersey, Officer K. Love, Andrew Samuels, Nate Morrison, and Deputy Perry with respect to the night incident as set forth in claim one of the Amended Complaint.

Further, Separate Defendant Tommy Waldron's Motion for Summary Judgment (ECF No. 47) is **GRANTED IN PART and DENIED IN PART** as follows:

- the motion is **denied** as to Plaintiff's individual capacity claims against Waldron; and
- the motion is **granted** as to Plaintiff's official capacity claims against Waldron, and these claims are **DISMISSED WITH PREJUDICE**.

The following claims remain for trial:

- Plaintiff's individual capacity claims against Robert Jones, Nick Funderburk, Chase Kersey, Officer K. Love, Andrew Samuels, Nate Morrison, and Deputy Perry with respect to the night incident as set forth in claim one of the Amended Complaint; and
- Plaintiff's individual capacity claims against Separate Defendant Tommy Waldron as set forth in claim two of the Amended Complaint.

IT IS SO ORDERED, this 4th day of March, 2020.

/s/ Susan O. Hickey
 Susan O. Hickey
 Chief United States District Judge